

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID C. GANNON, No. C 05-2299 SBA

Plaintiff,

V.

ORDER

JOHN E. POTTER, et al.,

[Docket Nos. 6, 9]

Defendants.

On June 6, 2005, Plaintiff filed a complaint against defendants John E. Potter, the Postmaster General, and the United States Postal Service ("Defendants") [Docket No. 1].

On August 24, 2005, Defendants filed a Motion to Dismiss Plaintiff's Retaliation Claim for Lack of Jurisdiction [Docket No. 6]. Defendants' Motion to Dismiss is currently set for an October 4, 2005 hearing.

On September 13, 2005, Plaintiff filed a First Amended Complaint [Docket No. 9]. By its very nature, the First Amended Complaint supersedes Plaintiff's initial complaint. *See Loux v. Rhay* 375 F.2d 55, 57 (9th Cir. 1967) ("The amended complaint supersedes the original, the latter being treated thereafter as non-existent."). The Court therefore finds that Defendants' Motion to Dismiss has been rendered moot, and that it does not serve the interests of judicial economy to proceed on a Motion that is no longer directed at the operative complaint.

Accordingly,

IT IS HEREBY ORDERED THAT Defendants' Motion to Dismiss [Docket No. 6] is DENIED AS MOOT. The October 4, 2005 hearing on Defendants' Motion to Dismiss is VACATED.

IT IS FURTHER ORDERED THAT Defendants shall respond to Plaintiff's First Amended Complaint within fifteen (15) days of the date of this Order. Additionally, Plaintiff is expressly reminded that, pursuant to

1 Federal Rule of Civil Procedure 15, he may not file another amended complaint without first seeking prior leave
2 of Court. The parties are further reminded of their obligation to meet and confer prior to filing any motions with
3 this Court.

4 IT IS SO ORDERED.

5 Dated: 9-22-05

Saundra B. Armstrong
6 Saundra Brown Armstrong
7 United States District Judge